Supreme Court, U. S.
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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-576

FRANK ERHARD,
Petitioner,

VERSUS

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF TO THE MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

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January, 1976

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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The government's Memorandum in Opposition fails to deal with the matter of *ferae naturae* which recognizes that man can protect himself and his property from the depredations of wild animals. Petitioner replies to other matters for clarification urging four propositions as follows:

PROPOSITION NO. 1

THE PETITION FOR WRIT OF CERTIORARI IS TIMELY FILED.

Petitioner believes that his Petition for Certiorari is timely filed. Judgment was entered on August 19, 1975. On August 27, 1975, Petitioner filed notice of intent to seek

certiorari and Motion for Stay of Mandate, on September 24, 1975, the 10th Circuit Court of Appeals entered Judgment granting the stay pending application for certiorari until October 24, 1975, and on October 16, 1975, the Petitioner filed forty printed copies of the petition in this Court.

Additionally the Supreme Court is respectfully requested to review the substantial question of denial of due process to this petitioner as raised in the Petition for Certiorari, as this Supreme Court has done in the past in exercising its discretion to the end that justice is done. The Court held that timeliness was not jurisdictional in *Durham* v. *U. S.*, 401 U.S. 481, 91 S.Ct. 858, 28 L.Ed.2d 200, and in *Taglianetti* v. *U. S*, 394 U.S. 316, 89 S.Ct. 1099, 22 L.Ed.2d 302, and in cases cited therein. That such can be waived by the Supreme Court was announced in *Schacht* v. *U. S.*, 398 U.S. 58, 90 S.Ct. 1555, 26 L.Ed.2d 44.

PROPOSITION NO. 2

WITHOUT A LIBRARY CONTAINING THE TREATIES, *AND* ALL FEDERAL REGULATIONS SINCE 1916, A PERSON HAS NO WAY TO DETERMINE WHAT IS A MIGRATORY BIRD UNDER 16 U.S.C. SEC. 703.

On page 4 of the Memorandum in Opposition appears this sentence: "Section 703 clearly alerts the reader to the necessity of referring to the conventions and regulations, and the list of protected birds in the regulations is unambiguous."

The terms of 16 U.S.C. Sec. 703 that refer a person to the two treaties *only* as to what is a migratory bird just are not as *clear* as the Response lets on. The essence of the

due process clause of the Fourteenth Amendment is the rule that all persons "are entitled to be entitled to be informed as to what the state commands or forbids," *Papachristou* v. *City of Jacksonville*, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110.

The Supreme Court in *Wright* v. *Georgia*, 373 U.S. 284, 293, 83 S.Ct. 1240, 1246, 10 L.Ed.2d 349, said that "a conviction under a criminal enactment which does not give adequate notice that the conduct charged is violative of due process."

The reference to the treaties is vague enough—few libraries in Oklahoma have all U. S. Treaties and fewer have all federal regulations, to require a person to search all federal regulations since 1916 or 1936 to find whether or not he is violating a federal law when engaging in a sport licensed by the State of Oklahoma would seem to stretch due process of law to the very breaking point.

Nothing in the record shows that, "if the petitioner elected not to kill the falcon, he should have given the wounded bird to state or federal wildlife authorities"—and no authority is shown for this bit of advice appearing at page 3 of the Memorandum in Opposition.

PROPOSITION NO. 3

OMITTING PUNCTUATION OF WORDING ON OKLAHOMA FALCONRY LICENSE LEADS TO WRONG CONCLUSION.

The record should be quoted or paraphrased accurately.

The Supreme Court will note the wording on Petitioner's Oklahoma Falconry License (Tr. Defendant's Exhibit 2) differs from the paraphrased wording set out on page 3 of the Memorandum in Opposition.

The government's Memorandum in Opposition says,

> "In the first place, the permit only authorized the possession of not more than three hawks, owls, or eagles that are nonindigenous to North America (29 Okla. Stat. Ann. Sec. 318 (1970), * * *."

The license and the statute read,

> "is permitted to possess, * * *, a maximum of three hawks, three owls, or three eagles (those of which are nonindigenous to North America), or any combination of the three, but totaling no more than three."

So when reading the Falconry License from the billfold in his pocket, it is clear that the "nonindigenous to North America," refers only to eagles.

PROPOSITION NO. 4

THE GOVERNMENT'S MOTION IN OPPOSITION IS NOT TIMELY FILED.

Under Rule 24 it would appear that the Memorandum of the United States in Opposition is not timely filed. Fifty days after October 16, 1975, is about December 5, 1975. Under date of December 18, 1975, Petitioner on December 22, 1975, received the Memorandum in Opposition.

CONCLUSION

Petitioner asked in his Petition for Writ of Certiorari if there was a case to be found where man was charged with a crime because he made a pet of a wild animal that destroyed his property. The Memorandum in Opposition does not answer the question.

With all the legal talent available in Washington, D.C., it looks like the government hasn't found such a case either.

Wherefore, the Petitioner again asks the United States Supreme Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,

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January, 1976